

## **CHAPTER 7**

### **TIME AND ATTENDANCE**

#### **7-1. Entitlements.**

a. In accordance with ER 690-1-321 and DOD Manual 7000.14-R Vol. 8, Human Resource Office (HRO) personnel at the supported MSC/District should make basic determinations as to pay entitlements of employees performing emergency assistance work, including Sunday pay, hazardous duty pay, tour of duty changes, night differential, etc.

b. The classification of the duties of a position determines the overtime pay entitlement for the employee assigned to the position. Positions are classified as exempt or non-exempt from the Fair Labor Standards Act (FLSA). Therefore, employees in their positions are either EXEMPT or NON-EXEMPT from the FLSA. In most cases, non-exempt positions are those that are technical, specialized, clerical and/or non-supervisory.

c. Non-exempt employees are covered by the provisions of the FLSA and Title V of the United States Code. Exempt employees are covered only by Title V (they are exempt from FLSA coverage). Specific USACE and FEMA guidance related to pay of exempt and non-exempt employees in support of an emergency are provided at Appendix E-1 through E-6.

d. The rules for payment of overtime and travel as hours of work differ according to an employee's FLSA status. Overtime pay for exempt employees is the higher of the overtime rate of pay of a GS-10/1, or the employee's hourly rate of pay. The overtime rate for a non-exempt employee is 1½ times the employee's hourly rate of pay. More specific guidance pertaining to travel as hours of work is provided at Appendix E-7 through E-11.

e. FLSA status is determined by the nature of duties performed by the employee, and FLSA status impacts pay. Therefore, it is imperative that deployed employees perform temporary work consistent with their official FLSA status. There are times when this is not possible. As such, employees and supervisors must be aware of the impact of exempt employees temporarily performing non-exempt work, and the less frequent occurrence of non-exempt employees performing exempt work.

f. All USACE employees have an FLSA status tied to their official position of record. When deployed on an emergency response, each employee has a position description tied to an Englink tasker. Although the Englink position descriptions have an FLSA status, employees continue to retain the FLSA status of their officially classified position of record.

g. During a deployment which is not an emergency situation (an emergency situation is defined as an existing situation that directly threatens human life and safety; this does not apply to most USACE emergency response deployments), temporary work and the effect on FLSA status are governed by 5CFR 551.208(b) and (c). Note there is no time limit for deployed employees performing work consistent with their FLSA status (exempt performing exempt work; non-exempt performing non-exempt work).

(1) *Effect on non-exempt employees (551.208(b))*-when a non-exempt employee performs exempt work for more than 30 calendar days, the employee must be considered exempt for the entire period of temporary work. When this happens, the employee is not entitled to FLSA overtime pay, but rather Title V overtime pay, and pay may have to be recalculated retroactive to the beginning of the period of temporary work.

(2) *Effect on exempt employees (551.208(c))*-when an exempt employee performs non-exempt work for more than 30 calendar days, the employee must be considered non-exempt for the entire period of temporary work. When this happens, the employee is entitled to FLSA overtime pay instead of Title V overtime pay, and pay may have to be recalculated retroactive to the beginning of the period of temporary work.

h. **The “29-day Rule”** - The “29-day rule” is a USACE coined name for the Corps guidance on the time limit exempt employees can perform non-exempt duties. Exempt employees assigned non-exempt duties cannot perform these duties for more than 30 days without being compensated at the rate of 1½ times their hourly rate of basic pay (i.e. FLSA overtime pay). The FEMA policy is to reimburse in accordance with employees’ position of record. Thus, the Corps would not receive full reimbursement for exempt employees who are entitled to non-exempt pay after 30 days of performing non-exempt duties. Therefore, the “29-day rule” was established for emergency deployments. This rule serves to provide guidance on rotating exempt employees performing non-exempt work before they exceed the 30-day threshold. Because of FLSA issues, the FEMA reimbursement policy, and the importance of appropriately assigning work, most exempt employees are initially assigned to a 29-day or less temporary assignment.

i. In keeping with the FEMA reimbursement policy, it is USACE policy to make every effort to match an employee’s official FLSA status with the FLSA status of the Englink position description. When this is not possible, the length of position assignment should be limited to 30 days or less. An extension beyond 30 days for an employee in a deployed position with an FLSA status not consistent with the employee’s position of record must be approved by the Commander or Deputy Commander with fiscal responsibility.

(1) In the case of exempt employees performing non-exempt work, the period of temporary work is the time during which work is actually performed. Travel time is not considered performing non-exempt duties. The 30-day period does not begin until an employee actually begins performing non-exempt work. Therefore, the 30-day period may not begin on the effective day of the assignment if the employee does not perform non-exempt work that day.

(2) The 30 days of performing non-exempt duties must be consecutive for an exempt employee to retroactively receive non-exempt pay. If an employee goes to the same event multiple times, but performs exempt duties in between deployment, the 30 days starts over. However, sending someone home to avoid the cost of paying FLSA overtime is not acceptable, as it may be considered a manipulation of work to avoid the employee protection purposes of the FLSA. Additionally, a new funding stream or new tasker does not constitute a new 30-day period. There must be an interruption of non-exempt work by exempt work.

(3) In cases where an emergency situation exists, the FLSA determination of the temporary work is made on a weekly basis, rather than a 30-day period (551.208(d)). An emergency situation is narrowly defined as a temporary condition that poses a direct threat to human life or safety, serious damage to property, or serious disruption to the operations of an activity, as determined by the employing agency (551.104). This condition of determining FLSA status is rarely used within USACE because most of our assets are deployed when a direct threat to life or human safety no longer exists. USACE policy states that the emergency situation FLSA determination criteria specified in 551.208(d) will only be used when specifically stated through USACE Headquarters.

(4) When using the emergency situation condition (551.208(d)) to determine FLSA status, non-exempt employees are paid under FLSA regardless of the type of duties they perform. Exempt employees are paid under FLSA if they perform non-exempt duties for more than 20% of their work hours in a given workweek.

(5) When a deployed employee performs duties inconsistent with his official FLSA status, it is the responsibility of the deployed supervisor to certify the performance of these duties and to notify the home station EOC. In order for the employee to be properly paid, the EOC MUST notify the Human Resources office. The Human Resources office and employee's home station supervisor must work together to submit two personnel actions: the first will retroactively change the employee's exemption status, and the second will return it to the correct FLSA status. The HR office is responsible for ensuring the CPOC has the documentation necessary to correctly pay the employee should the employee exceed the 30-day period. DFAS will not accept a memo from the employee's CSR to manually change the FLSA code. The change to FLSA code must be initiated with a personnel action (unless otherwise agreed upon procedures between CPOC/CPAC prevail).

j. “Waiver of the Biweekly Limitation on Premium Pay.” At the discretion of the lead (supporting) Division Commander, District level commanders have the authority to temporarily waive the Biweekly Limitation on Premium Pay for specific individuals where the commander can exercise personnel appointing authority (normally the head of an installation or activity). The Lead (Supported) District Commander for an event can be authorized to approve bi-weekly waivers USACE-wide for the specific event assigned to that lead district. Approval of the biweekly waivers must be in accordance with the attached Office of the Under Secretary of Defense memorandum (See Appendix E-12) and the DoD Policy found at <http://www.cpmc.osd.mil/cpm/docs/M1400550.pdf>.

(1) When the biweekly limitation is waived by the lead district commander, a letter from the lead district commander is required by the Defense Finance and Accounting Service (DFAS). The letter should include the specific mission (i.e., Enduring Freedom or other appropriate mission) and effective date (letterhead - template is attached at Appendix E-13, using first example of paragraph 2 in template). This letter will be provided to the UOC, all USACE EOCs and the USACE Payroll Program Manager at Commercial (402) 221-4043 and Fax (402) 221-4766.

(2) Once the biweekly limitation waiver has been issued to DFAS, individual letters can be sent from individual Emergency Managers to DFAS identifying the specific employee's name, SSN, specific mission (as identified in the original waiver letter), effective date and end date, if temporary (letterhead - template is attached at Appendix E-13, using second example of paragraph 2 in template). If the entitlement is temporary and a termination date is provided, DFAS will automatically terminate the entitlement on the end date. No other action would be necessary by the submitting command. If no end date is given at the time of submission the template letter can be used to provide an end date once the mission is completed. If more than one employee is entitled, one letter may be submitted to cover all of the employees.

(3) Both the biweekly limitation waiver letter and the letter should be faxed to DFAS imaging at DSN 699-9795/96/97/98, toll free at 866-401-5849, Commercial at 317-510-9795/96/97/98. Procedures for processing Biweekly and Annual Limitation on Premium Pay are at: <http://cpol.army.mil/library/permis/2415a.html>.

k. Supervisors' Responsibilities and Information

(1) Know the FLSA status of the temporary duties and FLSA status of TDY personnel assigned to you.

(2) Coordinate with the EOC and HR to ensure employees deploy to positions with an FLSA status consistent with the employee's official position of record FLSA status.

(3) Only non-exempt employees should perform non-exempt duties.

(4) Only when other avenues for filling a position have been exhausted should exempt employees be permitted to perform non-exempt duties.

(5) Ensure Commander or Deputy Commander level approval for extensions of exempt employees performing non-exempt duties.

(6) Assess mission needs. If you need TDY assistance beyond 29 days and you do not have sufficient non-exempt employees to complete the non-exempt duties of the mission, initiate taskers for additional personnel at least 15 days prior to the rotation date of exempt personnel. Work with your deployed HR representative, EOC, and UOC to identify personnel staffing options such as reemployed annuitants or volunteers from other federal agencies, or local emergency hires.

#### 7-2. Reporting and Labor Costs.

a. A Direct Charge Matrix has been established to provide guidance for labor charges in support of an emergency effort under the Stafford Act. To ensure labor is properly charged, please refer to the matrix at Appendix C-8 to C-14.

b. Individuals that will deploy are required to provide their regular source of pay, designated as project (i.e., OLMSTEAD lock and dam), overhead (i.e., G&A, RM, Logistics), or appropriated (GE/OMA – ED&M) to the supported EOC.

c. The supported MSC/District EOC should provide time sheets to employees on TDY in support of a disaster. The time sheet should reflect the event name, emergency assignment site, and the mission name, i.e., ice, debris, etc. A memorandum clearly stating their tour of duty should also be issued. This should include a breakout of regular hours, scheduled overtime hours and differential hours. For sample memorandums for GS and Wage employees see Appendix E-14 through E-17. Travel as hours of work entitlements will be determined according to the employees's deployment tour of duty. The deployment tour of duty applies when the employee commences travel to the deployment site and ends upon the employee's completion of return to home station. A Travel Day Form should be filled out. For a sample form see Appendix E-18. If travel comp-time is applicable for any additional hours, employee should complete the required paperwork as stipulated in the travel comp-time policy.

d. Employees deploying in the middle of an Alternate Work Schedule must complete their timesheet for that week or pay period as if they were still at their Permanent Duty Station (PDS.) Depending on which alternate work schedule you are on, the next week or the next pay period, you will be transferred to the disaster tour of duty. Failure to change your work schedule will result in "Monies due to the Government".

e. Employees should report labor to the supported MSC/District EOC/RFO administrative personnel; however, employees working at HQUSACE for a disaster mission should report labor to the UOC. All time must be recorded only on the Time and Attendance (T&A) sheets shown in Appendix E-19. (*modified*). An electronic fillable form is permitted in the same format.

f. The supported MSC/District EOC is responsible for completing and approving DA Form 5172-R., Overtime Request and Authorization prior to the employee working unscheduled overtime not covered in the employee's Tour of Duty Memo. A DA Form 5172-R will also be required for any individual variation to the TOD starting and ending time as well as any variation to the total hours worked for any specific day. Any changed to the regular TOD be it start and end time and/or total daily hours worked will be supported by a revised TOD Memo. The supported MSC/District EOC is responsible for providing the approved copy of the DA Form 5172-R to the supporting MSC/District EOC Under no circumstances will an employee be paid overtime that is not worked, even if included in the TOD.

g. The supported MSC/District EOC should designate one or more administrative personnel to coordinate T&A for employees on temporary duty. It is required that Emergency Field Supervisors verify and sign T&A sheets weekly. Administrative personnel of the supported MSC/District EOC should validate mission assignments and fax/e-mail a copy of the signed T&A sheet to the UOC or the EOC of the supporting MSC/District. When the supported activity faxes the timesheets to the UOC or the EOC of the supporting MSC/District, the fax must include a cover sheet with a reminder to timekeepers and supervisors it is the official report of the employee(s) time. Timekeepers and supervisors are **NOT TO ACCEPT TIMESHEETS OR CHANGES THERETO** sent to them by the employee and must validate that the mission assignment agrees with the *actual* mission assignment cited on the customer order. Under **NO** circumstances should deployed personnel fax/e-mail T&A sheets directly to individual timekeepers or supervisors at HQUSACE or the supporting MSC/District, nor should employees be allowed to phone T&A data to their regular timekeeper or supervisor. T&A sheets for personnel assigned to the UOC or the supported MSC/District EOC should be faxed to the UOC or the supporting MSC/District EOC NLT 1800 hours (disaster site time) every Sunday for the preceding workweek. For early labor cutoff 8 hours regular time should be recorded and no estimated timesheets will be provided by the supported MSC/District EOC.

h. The supporting MSC/District EOC is responsible for verifying labor charge codes and distributing the T&A and Overtime Request Authorization sheets to the appropriate timekeepers. CEFMS labor entry and certification should be based on the T&A sheets signed by the emergency field supervisor. Final CEFMS labor certification should occur at the individual's PDS by their regular supervisor. The UOC or the supporting MSC/District EOC is responsible for maintaining a complete set of the faxed T&A and OT Request and Authorization sheets for the purpose of verifying labor charges before certifying billings to the supported MSC/District.

i. For Stafford Act funding, labor charge codes should be established for each customer order received from the supported MSC/District prior to deployment of the team member. This labor code should be given to the team member to use on the T&A sheet for submission back to the home station. Upon receipt, supporting MSC/Districts should ensure customer orders reflect only one mission assignment (i.e., ESF #3 activation, water, ice, debris, etc.), one event (Hurricane Dennis, El Nino Floods of Northern California, New Madrid Earthquake, etc.), and one type of declaration per State per customer order.

j. PDA/DSR Missions. Departmental overhead costs should not be charged on labor for employees working in direct support of Preliminary Damages Assessments (DA) and Damage Survey Report (DSR) missions. See Appendix E, paragraph 1.5. of ER 11-1-320 which requires overhead to be overridden. FEMA no longer calls it PDA or DSR mission. The correct name is Project Work Sheets (PWS). This is the only mission that overhead is overridden.

7-3. Instructions for Filling out Timesheets. Employees are responsible for reporting their labor to their emergency field supervisor by mission and by declaration. The completed time sheet will be signed by the Emergency Supervisor and given to the UOC (if applicable) or the supported MSC/District EOC for validation of the mission, tasker, and placement of the hours in the proper column. The EOC will validate and fax the timesheet to the supporting MSC/District EOC who will validate the charge code, sign the timesheet and pass it onto the official timekeeper. The original timesheet should be kept at the supported MSC/District EOC for 6 years 3 months.

a. Filling out the Form:

**Name Block:** Enter the individual's last name, first name, and middle initial.

**Permanent Organization:** Enter the home station organization and office symbol, i.e., Jacksonville District, CESAJ-CO-E.

**Emergency Assignment Site/Mission:** Enter the emergency site assigned, i.e., Homestead EFO, mission name and number and declaration number. If unsure, please contact the EOC, or whoever handles the taskers in ENLink to verify your mission and declaration number.

**Dates Worked:** Enter the beginning and ending dates for this reporting period. Generally, this should be the Sunday beginning the pay period, and the Saturday ending the pay period. An exception to this is when an individual arrives or leaves in the middle of the week or month end. Reporting is completed weekly, **NOT** bi-weekly, and completed **EVERY** Sunday.

**Timekeeper's Name and Fax #:** Enter your assigned timekeeper's name and fax number. And enter your permanent duty station. (With the new timesheets the timekeeper's name is omitted, place the FAX # under the timekeeper signature line.)

**In & Out Blocks:** This is to assist the supervisor in accounting for the individual and the type of pay they should receive. This should be the time the individual arrives for duty and the ending time the individual leaves at night, as well as any departures and returns during the duty period. Hours should be reported based upon the 24-hour clock, i.e., 0700 to 1900 hours. All hours worked will be posted on the day the shift begins (ie. Do not sign out at midnight and back in at 0001). All lunch hours will be reflected in the clock hours.

b. Type of Pay: Enter the number of hours under the appropriate type pay block. Total each column. Definitions and more clarification of type of pay including what is included in Appendix E-20 are:

CB = Compensatory Time for Travel  
CD = Credit Earned (not encouraged and not paid by FEMA)  
CE = Compensatory Time (not encouraged and not paid by FEMA)  
CN = Credit Used (not encouraged and not paid by FEMA) HD = Hazardous Duty Pay  
KA = LWOP  
KC = AWOL  
LH = Holiday Leave  
LA = Annual Leave  
LS = Sick Leave  
LN = Administrative Leave (normally given by Commander)  
LV = Excused Leave  
OS = Overtime, Scheduled (approved scheduled overtime hours shown in memorandum)  
OU = Overtime, Unscheduled (5172-R is required for all overtime hours worked outside scheduled tour of duty)

General Schedule Employees:

RG = Regular, (General Schedule and Senior Executive Service)  
SG = Sunday Work (General Schedule and Senior Executive Service)  
ND= Night Differential (scheduled regular tour of duty hrs worked between 1800-0630)  
HG = Holiday Work (General Schedule and Senior Executive Service)



Prevailing Employees:

RF = Regular, First Shift  
SF = Sunday Work, First Shift  
HF = Holiday Work, First Shift  
RS = Regular, Second Shift  
SS = Sunday Work, Second Shift  
HS = Holiday Work, Second Shift  
RT = Regular, Third Shift  
ST = Sunday Work, Third Shift  
HT = Holiday Work, Third Shift

c. Labor Charge Code: Labor charge codes should be established for each Customer Order received from a Supported MCS/District prior to deploying team members. The charge code should be given to the team member for inclusion on each submission of their timesheets.

d. Certification Blocks: Each individual involved in managing the individual's time must sign the appropriate block. The employee's signature certifies the time reported is correct. The signature of the field supervisor certifies the employee's time is valid and that the employee was at the site during those hours. The signature of the supervisor at the EOC or the supporting MSC/District EOC certifies that time is approved as shown. After posting time in CEFMS the HQUSACE or the supporting MSC/District timekeeper signs the T&A sheet and forwards a copy to their UOC/EOC.

e. Certification of CEFMS CETAL Report: Procedures need to be established locally to ensure that all required signatures are obtained on the CEFMS CETAL report. The local supervisor signs electronically. The local timekeeper and the employee are manual signatures. Either the employee's signature must be obtained by fax, or similar method, or a suspense file must be maintained to ensure signature is obtained upon return to home station.

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